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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,497	02/21/2001	Naoki Miyano	0717-0459P	6768
2292	7590	10/19/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH			AHMED, SAMIR ANWAR	
PO BOX 747				
FALLS CHURCH, VA 22040-0747			ART UNIT	PAPER NUMBER
2623				

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/788,497	MIYANO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Samir A. Ahmed	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 July 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

1. The amendment filed 7/27/05 have been entered and made of record.
2. Applicant's arguments filed 7/27/05 have been fully considered but they are not persuasive with regard to claims 1, 7-9, 10 for the following reasons:

Applicant alleges, "Applicant respectfully submits that the claimed invention is distinguished [,]" (page 7, last three lines-page 9, last line). The Examiner disagrees. Watkins discloses that the overlay of the RGB colors appearing in increasing intensity for the red, green, yellow traffic lights, yellow road signs and animal navigation hazard which could be a black sheep. The color tones of the overlay from the left and right output of the cameras is adjusted according to the intensity of an animal's color such as a black sheep such that the animal is brightly illuminated in the displayed overlay image (col. 5, line 57-col. 6, line 35, i.e., the color tones having a predetermined correspondence with the intensity level (illumination) represented by the data output from the left and right cameras.

3. Applicant alleges, "Applicant further respectfully submits that the claimed invention as set fourth in claim 10 [,]" (page 10, line 1-page 11, last line). The Examiner disagrees. Firstly, Watkins et al. disclose a right infrared camera and a left infrared camera, a right visible light camera and a left visible light camera as shown in Figure 1 (Col. 2, lines 13-43). Watkins further discloses an image synthesis apparatus for synthesizing data output from the right infrared camera and the left infrared camera and data output from the right visible light camera and the left visible light camera so that a 3-D thermal image and a 3-D visible light image are observed by an observer as overlapping each other (Col. 2, Lines 44-67, col. 4, lines 42-44, col. 5, lines 25-27,

Abstract). Secondly, In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case Higuchi et al. discloses that it is known in systems for measuring 3D shapes and dimensions to use a slit device and an infrared directive device for directing infrared toward a subject through the slit device in order to detect the subjects shape and characteristics (Col. 1, Lines 17-31).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 and 7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Watkins et al. (6,597,807). The grounds for rejections stated in paragraph 5 of the Office Action mailed on 4/29/05, are incorporated by reference herein.

As to claim 1, refer to claim 1 rejection stated in paragraph 5 of the Office Action mailed on 4/29/05. Watkins further disclose, where in the three-dimensional thermal image comprises a plurality of color tones having a predetermined correspondence with a luminance represented by the data output from the right infrared camera and the data output by the left infrared camera [the overlay of the RGB colors appearing in increasing intensity for the red, green, yellow traffic lights, yellow road signs and animal navigation hazard which could be a black sheep. The color tones of the overlay from the left and right output of the cameras is adjusted according to the intensity of an animal's color such as a black sheep such that the animal is brightly illuminated in the displayed overlay image (col. 5, line 57-col. 6, line 35, i.e., the color tones having a predetermined correspondence with the intensity level (illumination) represented by the data output from the left and right cameras].

As to claims 7-9, refer to claim 7-9 rejections stated in paragraph 5 of the Office Action mailed on 4/29/05, are incorporated by reference herein.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins et al. (6,597,807) as applied to claim 1 above, and further in view of

Art Unit: 2623

Sogawa (6,396,946). The grounds for rejections stated in paragraph 5 of the Office Action mailed on 4/29/05, are incorporated by reference herein.

As to claims 2-4, and 6 refer to claim 2-4, and 7 rejections stated in paragraph 7 of the Office Action mailed on 4/29/05, are incorporated by reference herein.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins et al. (6,597,807) in view of Sogawa (6,396,946) as applied to claim 4 above, and further in view of Freeman et al. (6,640,130). The grounds for rejections stated in paragraph 8 (page 6) of the Office Action mailed on 4/29/05, are incorporated by reference herein.

As to claim 5, refer to claim 5 rejection stated in paragraph 8 of the Office Action mailed on 4/29/05.

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins et al. (6,597,807) in view of Higuchi et al. (5,129,010). The grounds for rejections stated in paragraph 9 (page 6) of the Office Action mailed on 4/29/05, are incorporated by reference herein.

As to claims 10-11, refer to claim 1-11 rejections stated in paragraph 9 of the Office Action mailed on 4/29/05, are incorporated by reference herein.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

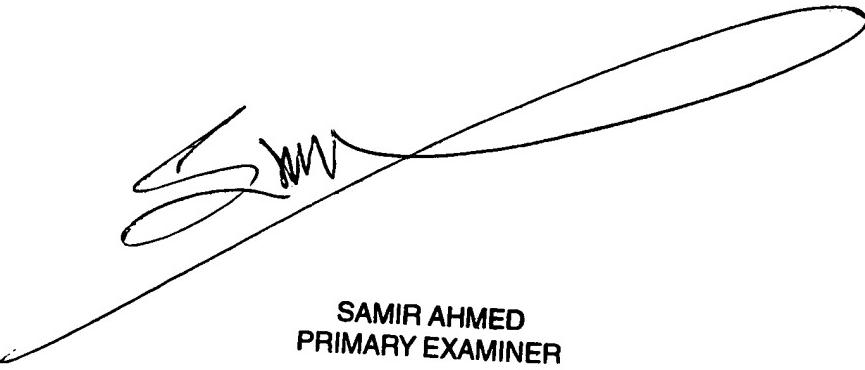
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samir A. Ahmed whose telephone number is (571) 272-7413. The examiner can normally be reached on Mon-Fri 8:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amelia Au can be reached on (571) 272-7414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SA



A handwritten signature in black ink, appearing to read "Samir Ahmed", is written over a large, thin-lined oval. Below the signature, the name is printed in a standard font.

SAMIR AHMED  
PRIMARY EXAMINER